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InterDent Service Corporation

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

POCATELLO DENTAL GROUP, P.C., an
Idaho professional corporation,

Plaintiff,

v.

INTERDENT SERVICE CORPORATION, a
Washington corporation,

Defendant.

INTERDENT SERVICE CORPORATION, a
Washington corporation,

Third-Party Plaintiff,

v.

Case No. CV-03-450-E-LMB

REPLY OF DEFENDANT/
THIRD-PARTY PLAINTIFF
INTERDENT SERVICE
CORPORATION TO THIRD-PARTY
DEFENDANTS DWIGHT G.
ROMRIELL, GREGORY ROMRIELL,
ERROL ORMOND AND ARNOLD
GOODLIFFE'S AMENDED
COUNTERCLAIM

U.S. COURTS
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POCATELLO DENTAL GROUP, P.C., an Idaho professional corporation; DWIGHT G. ROMRIELL, individually; LARRY R. MISNER, JR., individually; PORTER SUTTON, individually; ERNEST SUTTON, individually; GREGORY ROMRIELL, individually; ERROL ORMOND, individually; and ARNOLD GOODLIFFE, individually,

Third-Party Defendants.

For its reply to Dwight G. Romriell, Gregory Romriell, Errol Ormond and Arnold Goodliffe's (the "Romriell Defendants") Amended Counterclaim, defendant/third-party plaintiff InterDent Service Corporation ("ISC") states the following:

1. ISC denies the allegations in paragraphs 54 through 59.
2. No response is required to the remainder of the Romriell Defendants' allegations.

To the extent a response is required, ISC denies said allegations.

AFFIRMATIVE DEFENSES

Unless otherwise specified, ISC asserts the following affirmative defenses to the entire Amended Counterclaim and each and every action, if any, purportedly stated therein.

FIRST AFFIRMATIVE DEFENSE

The Amended Counterclaim fails to state causes of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The Romriell Defendants lacks standing to assert claims against ISC because they are not parties to the Management Agreement.

THIRD AFFIRMATIVE DEFENSE

The Romriell Defendants' claims are barred by the applicable statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

The Romriell Defendants' claims are barred by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

The Romriell Defendants have failed to adequately mitigate their damages, if any.

SIXTH AFFIRMATIVE DEFENSE

The Romriell Defendants have waived, or are estopped from asserting, all claims set forth in the Amended Counterclaim.

SEVENTH AFFIRMATIVE DEFENSE

The Romriell Defendants' claims are barred by plaintiff Pocatello Dental Group's prior material breaches of the Management Agreement.

EIGHTH AFFIRMATIVE DEFENSE

The Romriell Defendants' employer, plaintiff Pocatello Dental Group, breached the covenant of good faith and fair dealing and interfered with and frustrated ISC's ability to perform duties and obligations under the Management Agreement.

NINTH AFFIRMATIVE DEFENSE

Damages sustained by the Romriell Defendants are the result of independent, intervening and/or superseding causes, including but not limited to acts and omissions of plaintiff, other third-party defendants or third parties.

TENTH AFFIRMATIVE DEFENSE

The Romriell Defendants' claims are barred by the doctrine of *res judicata*, collateral estoppel and issue preclusion.

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ELEVENTH AFFIRMATIVE DEFENSE

The Romriell Defendants' claims are barred by the orders issued in *In re InterDent Services Corporation*, U.S. Bankruptcy Court for the Central District of California, Case No. 03-13494.

TWELFTH AFFIRMATIVE DEFENSE

The Romriell Defendants' claims are barred by 11 U.S.C.A. § 1141.

THIRTEENTH AFFIRMATIVE DEFENSE

The Romriell Defendants' claims are barred by the doctrine of ratification.

FOURTEENTH AFFIRMATIVE DEFENSE

The Romriell Defendants' claims are barred by the doctrine of mutual mistake.

FIFTEENTH AFFIRMATIVE DEFENSE

The Romriell Defendants' claims are barred by the doctrine of unilateral mistake.

SIXTEENTH AFFIRMATIVE DEFENSE

Some or all of the Romriell Defendants' claims are barred by the doctrine of impossibility of performance and/or frustration of purpose.

JURY DEMAND

ISC demands trial by jury on each and every issue so triable.

PRAYER FOR RELIEF

WHEREFORE, ISC requests judgment against plaintiff and that

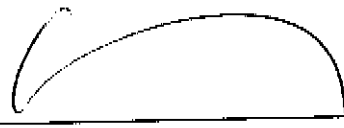
1. The Romriell Defendants take nothing;
2. The Court dismiss the Amended Counterclaim in its entirety;
3. ISC be awarded its costs, disbursements, expenses and expert witness fees incurred in defending this lawsuit, including appropriate and reasonable attorneys' fees, as

allowed by applicable law, including but not limited to Article 10.5 of the Management Agreement, Idaho Code § 12-120 and Idaho Code § 12-121; and

4. The Court shall award such other and further relief as it deems just and proper.

DATED: August 20, 2004.

STOEL RIVES LLP



G. Rey Reinhardt
Attorneys for Defendant/Third-Party Plaintiff
InterDent Service Corporation

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **Reply of Defendant/Third-Party Plaintiff InterDent Service Corporation to Third-Party Defendants Dwight G. Romriell, Gregory Romriell, Errol Ormond and Arnold Goodliffe's Amended Counterclaim** on the following named persons on the date indicated below by

- ☐ mailing with postage prepaid
- ☐ hand delivery
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to said persons a true copy thereof, contained in a sealed envelope, addressed to said persons at his or her last-known addresses indicated below.

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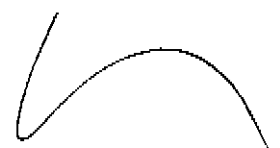
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DATED: August 20, 2004.

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* * * COMMUNICATION RESULT REPORT (AUG.20.2004 2:39PM) * * *

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Date: August 20, 2004

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